# RECENT IMPORTANT DECISIONS

CARRIERS OF PASSENGERS—DUTY TO STOP AT STATION TO PERMIT PASSENGER TO ALIGHT—CONTRIBUTORY NEGLIGENCE OF PASSENGER.—Plaintiff's intestate was riding in the front end of a crowded vestibule car in the coach next to the tender of the engine. When the train stopped at his station he tried to leave by the front end, but found the door from the vestibule closed. As he did not know how to open it, or was unwilling to be carried by his station, he stepped from his platform to the bumper of the tender and tried to follow it to the side and alight from it. Before he could do so the engine started with a lurch, he was thrown down and killed. The evidence strongly tended to prove that he would have escaped serious injury if the engineer had understood and heeded the cries and signals given by fellow passengers. *Held,* for the jury to say whether so leaving the train under unusual circumstances was contributory negligence on the part of the passenger. *Donnally* v. *Payne* (W. Va., 1921), 109 S. E. 760.

The court recognizes that for a passenger under ordinary circumstances to make a hazardous attempt to alight because the train does not stop at his station long enough to permit his leaving the train by the usual exits is in law contributory negligence, barring recovery. But peculiar circumstances may take the case out of the rule. The cases are very fully considered in *Filer* v. *N. Y. C. R. R. Co.,* 49 N. Y. 47, a leading case. Generally, courts regard alighting from a moving train as negligence *per se,* unless the carrier puts the passenger in the position of risking one danger in order to avoid another. *Pa. R. Co.* v. *Aspell,* 23 Pa. St. 147. The act of the passenger in such case is treated as the proximate, and the failure to stop the train as the remote, cause of the injury. *Jammison* v. *C. & O. Ry. Co.,* 92 Va. 327. Some courts say that by jumping from a moving train one ceases to be a passenger. *Com.* v. *B. & M. R. Co.,* 129 Mass. 500. This may be a question for the jury. *Ft. Worth & D. C. Ry. Co.* v. *Hawley* (Tex. Civ. App., 1921), 235 S. W. 659. In any view the instant case is at the very limit in holding that the carrier may be liable to one leaving the train in such a manner, and it is not strange that Miller, J., vigorously dissented from the decision. There was some evidence on which the jury might have had instructions as to the last clear chance, but the court does not pass upon that. Contributory negligence in such cases is not always a matter of law, but is to be tested by what the ordinarily prudent person would do under all the circumstances of the case. If reasonable men can differ, then it is for the jury. *Pa. R. Co.* v. *Kilgore,* 32 Pa. St. 292; *Louisville & N. R. Co.* v. *Crunk,* 119 Ind. 542. But cf. *Solomon* v. *Ry.,* 103 N. Y. 437.

CONSTITUTIONAL LAW—APPLICATION OF GUARANTY OF FREEDOM OF SPEECH TO ALIENS.—Information charging defendant, an alien, with violation of a statute of Connecticut penalizing seditious publications. Demurrer based

upon the Connecticut Bill of Rights, of which Section 5 reads: "Every *citizen* may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty," and Section 6: "No law shall ever be passed to curtail or restrain the liberty of speech or of the press." *Held,* demurrer overruled for two reasons: first, that aliens "do not possess the right of attempting to alter our form of government, and for that reason are not qualified to plead the privilege of unlimited political discussion," on which the provisions of the Bill of Rights are founded; and second, that the language of Section 6, above quoted, "plainly refers to the liberty of speech conferred by Section 5 upon citizens" alone, and hence is not applicable to aliens. *State* v. *Sinchuk* (Conn., 1921), 115 Atl. 33.

It is impossible to determine from the decision which of the two above reasons was the controlling one in the mind of the court. If the latter, there is some justification for the result; but if the former, a new and startling construction of the freedom of speech clause has received the sanction of judicial decision. There is no historical justification for restricting the clause until it is a mere concomitant of the right to "alter our form of government." On the contrary, one of the earliest objects of guaranties of freedom of speech, both in England and in this country, was the protection of discussion of religious matters. "FREEDOM OF THE PRESS IN MASSACHUSETTS," by Duniway, Chapters I to VI. In an address by the Continental Congress to the inhabitants of Quebec in 1774, the right of freedom of speech was broadly characterized as consisting, "besides the advancement of truth, science, morality and the arts in general, in the diffusion of liberal sentiment in the administration of government, the ready communication of thoughts between subjects, and the consequential promotion of union among them." JOURNAL OF THE CONTINENTAL CONGRESS, Vol. 1 (Ed. 1800), p. 57. Cooley, in his "CONSTITUTIONAL LIMITATIONS," Ed. 7, p. 604, after sketching the history of the right of freedom of speech, refers to the constitutional guaranties, and says: "Their purpose has evidently been to protect *parties* in free publication of matters of public concern, to secure their rights to a free discussion of public events and public measures, and to enable any *citizen* at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct." These views indicate a far broader historical basis for freedom of speech than that conceded by the Connecticut court. Nor has the doctrine of the principal case ever been asserted in previous judicial utterances. If it were sound, it is not unreasonable to suppose that it would have been brought to light, especially in the host of recent cases involving the Espionage Acts of 1917. In several of these cases the defendants were aliens. *Abrams* v. *U. S.*, 250 U. S. 616. Furthermore, both the due process and the equal protection clauses of the Fourteenth Amendment to the Federal Constitution should protect the alien from discriminatory action because of his alienage by a state. That these clauses apply to aliens as well as to citizens is well settled. *State* v. *Montgomery,* 94 Me. 192; *Yick Wo* v. *Hopkins,* 118 U. S. 356. It is true that the state, in the exercise of its police power, may make reason-

able classifications of persons and impose restrictions upon them. For instance, aliens as a class may be prohibited from entering the liquor business. *Trageser* v. *Gray,* 73 Md. 250. But the classification must bear some reasonable relation to the evil which it is sought to prevent, and it is doubtful if alien anarchistic propaganda is more dangerous than that of citizens. At any rate, it is for the legislature and not for the court to adopt the classification. It is entirely possible that the defendant in the principal case deserved the punishment he received, but the reasoning by which the court disposed of the case is questionable, to say the least.

CONSTITUTIONAL LAW—INCOME TAX ON SALARIES OF FEDERAL JUDGES.—Plaintiff, a United States district judge, paid an income tax under the provision of Sec. 213 of the Income Tax Act, on his judicial salary, under protest, and sued the deputy collector for the return of the tax. The United States Constitution, Art. 3, Sec. 1, provides that compensation of judges of the supreme and inferior courts "shall not be diminished during their continuance in office." *Held,* such a tax violates this constitutional provision. (Holmes and Brandeis, JJ., dissenting.) *Evans* v. *Gore,* 253 U. S. 245.

In reversing the federal court, 262 Fed. 550, the majority opinion points out that the purpose of this provision is to prevent the legislative department from influencing in any way the judiciary, and says that the public interest demands that the judge be kept even above the suspicion of outside influence. The tax does give the legislature power indirectly over the judicial department, and hence is invalid. The Sixteenth Amendment does not extend the taxing power to new or excepted subjects, but merely removes all occasion otherwise existing for an apportionment among the states of taxes laid on income, whether derived from one source or another, and hence does not extend to federal judges nor permit Congress to impose an income tax on them. Justice Holmes in his dissenting opinion reasons that the case is not within the scope of the provision, as the tax is laid on all persons having such amounts of income, and that at all events the Sixteenth Amendment gave such power to tax. The decision of the district court was commented upon favorably in 18 MICH. L. REV. 697. See also *Note,* 11 A. L. R. 532, 19 MICH. L. REV. 117; 34 HARV. L. REV. 70. The court in declaring that the judiciary must be, like Caesar's wife, "above suspicion," go a long way in their interpretation of the purpose and intent behind the constitutional provision, and unduly anticipate the alarming dangers which they so eloquently picture. The purpose of the provision is to protect the independence of the judiciary. Does the law give the legislature power to injure the judge without likewise injuring every other person in the same classification regarding income? It would seem not. Have the judges or any one of them been put into a class whereby the legislature may tyrannize over them? Not as yet, and if the time should come when such was attempted the judiciary will undoubtedly have the opportunity to say that such a classification is unreasonable and an arbitrary discrimination. Certainly, it requires quite a stretch of the imagination to conjure up the spectre of legislative discrimination which was so real to the Supreme Court.